

## **INITIAL STATEMENT OF REASONS**

### **Plan Submitter, RPF and LTO Responsibilities, 2000**

[Notice published February 18, 2000]

### **Title 14 of the California Code of Regulations (14 CCR):**

#### **Amend:**

|           |   |
|-----------|---|
| § 1035    | Plan Submitter Responsibility                   |
| § 1035.1  | Registered Professional Forester Responsibility |
| § 1035.3  | Licensed Timber Operator Responsibility         |
| § 1037    | THP Preharvest Inspection-Filing Return         |
| § 1092.11 | PTHP Submitter Responsibility                   |
| § 1092.12 | Registered Professional Forester Responsibility |
| § 1092.14 | Licensed Timber Operator Responsibility         |
| § 1092.16 | PTHP Review Inspection-Filing Return            |

#### **14 CCR § 1035      Plan Submitter Responsibility**

#### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS**

The Forest Practice Rules now require that the Plan Submitter provide specific notifications to the Licensed Timber Operator (LTO) and the Director. They also require that the submitter ensure that a Registered Professional Forester (RPF) perform all activities where regulation requires an RPF. This is not sufficient to provide the LTO professional guidance for implementation of the plan. The Board's Monitoring Study Group has reported that the Forest Practice Rules are effective when implemented but that there is a problem with compliance with the rules. This is, in part, a result of the Department not having sufficient staff to conduct enough inspections to ensure compliance with the rules and the plan. The Department has received funding to obtain additional staffing which will significantly aid in obtaining compliance with the rules. Providing RPF oversight of the implementation of a Timber Harvesting Plan (THP) will further increase the level of compliance with the rules of the Board.

#### **SPECIFIC PURPOSE OF THE REGULATION**

The Plan submitter is the party that has controlling interest in the THP. The Board rules now place a responsibility on the submitter to provide specific notification to the Department, the RPF, and the LTO. The rules also require that the Plan Submitter ensure that an RPF conduct any activities that an RPF is required to do by regulation. The RPF is the person who prepares the plan and understands what measures are included in the plan for protection of the resources. The purpose of the proposed amendment is to ensure

that the RPF provides professional guidance to the LTO so there is a better understanding of the protections included in the THP.

## **NECESSITY**

The proposed requirement for the Plan Submitter to obtain an RPF to provide professional advice to the LTO will provide a greater assurance that there will be compliance with the rules of the Board. RPF guidance to the LTO will provide a better understanding to the person who is actually doing the timber operations. Currently LTOs may misinterpret the plan prepared by the RPF. This occurs because of the technical nature of the THP and because of the professional standards required by the Forest Practice Act in the preparation of the THP. LTOs often do not have the professional expertise to understand the direction provided by the THP and there are unintended mistakes that result in violations of the rules and possible damage to the natural resources. With RPF guidance, this will be minimized.

## **ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES**

No other alternatives were presented to, or considered by the Board at this time.

## **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The Board has not identified any alternatives that would lessen any adverse impact on small businesses.

## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

Potential cost impact on private persons or directly affected businesses: The rule proposal will affect businesses and small business related to the timber industry by increasing the cost for timber harvest. These extra cost are primarily related the cost of additional time being required for the Registered Professional Forester. The range of cost for a small timber harvesting plan is estimated from \$100 – 2,000. This is primarily in added cost for a Registered Professional Forester. For these small plans, this is an estimated 50% increase in forester cost. The numbers would be much greater for larger more complex Timber Harvesting Plans, however the value of the timber harvested would also be much larger. It should be noted that the additional oversight by an RPF may result in a reduction in violations of the Forest Practice Rules statewide. With the potential for civil penalties related to violations, RPFs, LTOs, and landowners could benefit from the rules due to avoidance of the cost of civil penalties. Additionally, the RPF oversight could result in fewer impacts on resources such as wildlife and the beneficial uses of water. This would result in a benefit to the timberland owner as well as all other persons in the State in the long-term. The Board staff also considered that over an extended period of time, the amount of time an RPF would be required to oversee operations of experienced

operators would diminish so that the costs of the additional regulations would balance with the benefits derived from increased protection.

## **POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS**

The Board has not identified any adverse environmental effects from the proposed action.

### **14 CCR § 1035.1      Registered Professional Forester Responsibility**

## **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS**

The Forest Practice Rules now require that the Plan Submitter provide specific notifications to the LTO and the Director. They also require that the submitter ensure that an RPF perform all activities where regulation requires an RPF. This is not sufficient to provide the LTO professional guidance for implementation of the plan. The Board's Monitoring Study Group has reported that the Forest Practice Rules are effective but that there is a problem with compliance with the rules. This is, in part, a result of the Department not having sufficient staff to conduct enough inspections to ensure compliance with the rules and the plan. The Department has received funding to obtain additional staffing which will significantly aid in obtaining compliance with the rules. Providing RPF oversight of the implementation of a THP will further increase the level of compliance with the rules of the Board.

## **SPECIFIC PURPOSE OF THE REGULATION**

The proposed additional rule language for this section requires that the RPF disclose any financial interest with the LTO, plan submitter, timberland owner, or timber owner to the timberland owner, timber owner or plan submitter as it relates to the approved THP. This is to minimize the potential for a conflict of interest with respect to compliance with the rules of the Board.

The amendment proposes that the RPF be present on the THP area sufficient hours each week to know the progress of the operations and to advise the LTO on how to maintain plan and rule compliance. This addition will ensure that the LTO has a better understanding of the THP and how the protective measures are to be implemented.

The plan submitter, timberland owner and the LTO are to provide the RPF written authority to stop timber operations for 72 hours to prevent imminent or substantial damage to the resources. The amendment will minimize resource damage that may result from LTO implementation of a plan where there is a misunderstanding, mistake, or intentional failure to comply with the plan.

The RPF is to inform the LTO of potential environmental impacts and the mitigation measures to be taken to minimize such impacts. This is to enhance communications between the LTO and the RPF, to minimize resource damage, and prevent the need to stop timber operations when damage could have been prevented.

## **NECESSITY**

The amendment requires that the RPF disclose any financial interest with the LTO, plan submitter, timberland owner, or timber owner to the timberland owner, timber owner or plan submitter as it relates to the approved THP. This is necessary to minimize the potential for a conflict of interest among the parties. A conflict of interest may result in intentional violations of the Board rules to gain an economic advantage.

This amendment is needed to provide the LTO specific guidance for the implementation of a document (THP) prepared by a professional, which is technically written. Other professionals such as foresters, water quality engineers, biologist, archaeologists, geologists and other associated professionals write the contents of the THP for review. LTO's may have difficulty translating the content of the THP to actions conducted during timber operations. This lack of understanding may result in violations of the Board's rules. It is necessary to provide the LTO a better understanding of what is intended in the plan to minimize violations of the Board rules.

The Forest Practice Act (Act) and the rules currently provide the ability for the Director to stop timber operations where there is an imminent or substantial risk of damages to the resources. Even though this exists, there are a number of situations where damage occurs to the resources since the Department does not have sufficient personnel to inspect operations on a frequent basis. Providing the RPF with similar authority and recognizing that the RPF will be on the timber operation frequently, will minimize this event.

The proposal, which requires the RPF to advise the LTO of potential environmental damage and how to correct the problem will increase compliance with the rules of the Board. This adds to the oversight provided by the Department with inspections and will increase rule compliance and reduce resource damage.

## **ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES**

No other alternatives were presented to, or considered by the Board at this time.

## **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The Board has not identified any alternatives that would lessen any adverse impact on small businesses.

## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

Potential cost impact on private persons or directly affected businesses: The rule proposal will affect businesses and small business related to the timber industry by increasing the cost for timber harvest. These extra cost are primarily related the cost of additional time being required for the Registered Professional Forester. The range of cost for a small timber harvesting plan is estimated from \$100 – 2,000. This is primarily in added cost for a Registered Professional Forester. For these small plans, this is an estimated 50% increase in forester cost. The numbers would be much greater for larger more complex Timber Harvesting Plans, however the value of the timber harvested would also be much larger. It should be noted that the additional oversight by an RPF may result in a reduction in violations of the Forest Practice Rules statewide. With the potential for civil penalties related to violations, RPFs, LTOs, and landowners could benefit from the rules due to avoidance of the cost of civil penalties. Additionally, the RPF oversight could result in fewer impacts on resources such as wildlife and the beneficial uses of water. This would result in a benefit to the timberland owner as well as all other persons in the State in the long-term. The Board staff also considered that over an extended period of time, the amount of time an RPF would be required to oversee operations of experienced operators would diminish so that the costs of the additional regulations would balance with the benefits derived from increased protection.

## **POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS**

The Board has not identified any adverse environmental effects from the proposed action.

### **14 CCR § 1035.3 Licensed Timber Operator responsibilities**

## **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS**

There is a continued problem with the LTO properly implementing THPs and complying with the rules of the Board.

## **SPECIFIC PURPOSE OF THE REGULATION**

The proposed amendment requires the LTO to sign the THP and any major amendments to establish an agreement to comply with the plan and amendments. This will ensure that the LTO is aware of the contents of the plan and any major amendments.

The proposed amendment will require that the LTO maintain a contact on a THP who can receive advice from the RPF and has authority to stop timber operations if necessary. The purpose is to ensure there is always one person on site who has authority to direct timber operations.

## **NECESSITY**

The proposed requirement for the LTO to sign the THP and major amendments is necessary to ensure that the LTO has read and understands the plan. This also ensures that there is a signed agreement that the LTO will comply with the terms and specifications of the plan. Currently the LTO is not required to sign the plan.

The proposed requirement to have a contact person on the operation at all times who has authority to accept RPF advise and stop timber operations is necessary to minimize resource impacts. Currently, if the LTO is not on the operation there may not be anyone who has authority to control the timber operations. Employees may act independently and they have no liability under the Act and rules of the Board.

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## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

The requirement to sign the THP and major amendments to the THP, agreeing to comply with the THP has no cost associated. Providing the RPF with an on-site contact does not increase cost because the LTO will have employees on site to conduct the timber operations.

## **POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS**

The Board has not identified any adverse environmental effects from the proposed action.

## **14 CCR § 1037 THP Preharvest Inspection-Filing Return**

## **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS.**

This amendment will aid in assuring that the person who is going to conduct the timber harvesting will have a clear understanding of what is intended in the THP. Currently

there are situations where the LTO will end up in violation of the THP and Forest Practice Rules due to a lack of understanding of the THP on the part of all persons involved in timber operations.

### **SPECIFIC PURPOSE OF THE REGULATION**

The proposed amendment will increase the number of times that a LTO attends a preharvest inspection. The result of this will be that the LTO has a better understanding of the operational intent of the THP and therefore will be less likely to violate the Forest Practice Rules.

### **NECESSITY**

Currently there is no provision to encourage the LTO to attend THP preharvest inspections. When an operator does not attend a preharvest inspection, there is often not a clear understanding of what the RPF and agencies intended for environmental mitigation or operational limitations. The amendment is necessary to encourage the LTO to attend the preharvest inspections. This will result in fewer violations of the Forest Practice Rules and less environmental damage.

### **14 CCR §1092.11     Plan Submitter Responsibility**

### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS**

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### **SPECIFIC PURPOSE OF THE REGULATION**

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that the RPF provides professional guidance to the LTO so there is a better understanding of the resource protection measures included in the THP.

## **NECESSITY**

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### **14 CCR § 1092.12 Registered Professional Forester Responsibility**

## **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS**

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## **NECESSITY**

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The Forest Practice Act (Act) and the rules currently provide the ability for the Director to stop timber operations where there is an imminent or substantial risk of damages to the resources. Even though this exists there are a number of situations where damage occurs to the resources since the Department does not have sufficient personnel to inspect operations on a frequent basis. Providing the RPF with similar authority and recognizing that the RPF will be on the timber operation frequently, will minimize this event.

The proposal, which requires the RPF to advise the LTO of potential environmental damage and how to correct the problem will increase compliance with the rules of the Board. This adds to the oversight provided by the Department with inspections and will increase rule compliance and reduce resource damage.

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## **POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS**

The Board has not identified any adverse environmental effects from the proposed action.

### **14 CCR § 1092.14    Licensed Timber Operator responsibilities**

## **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS**

There is a continued problem with LTO properly implementing THPs and complying with the rules of the Board.

## **SPECIFIC PURPOSE OF THE REGULATION**

The proposed amendment requires the LTO to sign the THP and any major amendments to establish an agreement to comply with the plan and amendments. This will ensure that the LTO is aware of the contents of the plan and any major amendments.

The proposed amendment will require that the LTO maintain a contact on a THP who can receive advice from the RPF and who has authority to stop timber operations if necessary. The purpose is to ensure that there is always one person on site who has authority to direct timber operations.

## **NECESSITY**

The proposed requirement for the LTO to sign the THP and major amendments is necessary to ensure that the LTO has read and understands the plan. This also ensures that there is a signed agreement that the LTO will comply with the terms and specifications of the plan. Currently the LTO is not required to sign the plan.

The proposed requirement to have a contact person on the operation at all times who has authority to accept RPF advise and stop timber operations is necessary to minimize resource impacts. Currently, if the LTO is not on the operation, there may not be anyone who has authority to control the timber operations. Employees may act independently and they have no liability under the Act and rules of the Board.

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## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

The requirement to sign the THP and major amendments to the THP, agreeing to comply with the THP has no associated costs. Providing the RPF with an on-site contact does not increase cost as the LTO will have employees on site to conduct the timber operations.

## **POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS**

The Board has not identified any adverse environmental effects from the proposed action.

## **ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES**

No other alternatives were presented to, or considered by the Board at this time.

## **ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The Board has not identified any alternatives that would lessen any adverse impact on small businesses.

### **14 CCR § 1092.16   PTHP Review Inspection-Filing Return**

#### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS.**

This amendment will aid in assuring that the person who is going to conduct the timber harvesting will have a clear understanding of what is intended in the Timber Harvesting Plan (THP). Currently there are situations where the LTO will end up in violation of the THP and Forest Practice Rules due to a lack of understanding of the THP on the part of all persons involved in timber operations.

#### **SPECIFIC PURPOSE OF THE REGULATION**

The proposed amendment will increase the number of times that an LTO attends a preharvest inspection. The result of this will be that the LTO has a better understanding of the operational intent of the THP and therefore will be less likely to violate the Forest Practice Rules or the terms of the plan.

#### **NECESSITY**

Currently, there is no provision to encourage the LTO to attend THP preharvest inspections. When an operator does not attend a preharvest inspection, there is often not a clear understanding of what the RPF and agencies intended for environmental mitigation or operational limitations. The amendment is necessary to encourage the LTO to attend the preharvest inspections. This will result in fewer violations of the Forest Practice Rules and less environmental damage.

#### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

This rule amendment will not have a direct cost impact on any business. Where the LTO chooses to attend a preharvest inspection there will be a cost of a day's labor for the LTO. However, the understanding gained during that preharvest inspection will provide more efficient operation and an offset to the attendance of the preharvest inspection.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. Public Resources Code.
2. Fish and Game Code.
3. Barclays Official California Code of Regulations.
4. Report of the Scientific Review Panel on California Forest Practice Rules and Salmonid Habitat, Scientific Review Panel, June 1999.

**Pursuant to Government Code § 11346.2(b)(6)**: In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

## **PROPOSED TEXT**

The proposed revisions or additions to the existing rule language is represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations, and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.

doh: 2/7/00

File: Findings\2000 RPF Responsibilities\ISOR